

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4915 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

EDUCATION SOCIETY

Versus

RAMESHCHANDRA NATHALAL PRAJAPATI & ORS.

Appearance:

MS MAMTA R VYAS for Petitioners
MR MUKUND M DESAI for Respondent No. 1
None present for other Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/06/1999

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. The petitioners challenge by this writ petition under Article 227 of the Constitution of India, the judgment of the Gujarat Primary Education Tribunal, Ahmedabad, dated 3.5.95 passed in Application No.318 of

1989 and cognate matters.

#. This writ petition was admitted by this Court on 9.2.96 but the Court has declined to grant any interim relief. After filing of this writ petition, the petitioners filed draft amendment which has been granted.

#. The respondent No.1 was appointed as assistant primary teacher in the school of petitioners from 17th February 1987. The management of the school applied to the competent authority for grant of permission for closure of Division VI-C and VII-C of the school. This application has been made on 17.12.88. The petitioners served a show cause notice dated 30.6.89 to the respondent No.1 for termination of his services. As usual, against this show cause notice, the respondent No.1 filed an application before the Gujarat Primary Education Tribunal and on 4th October, 1989, the Tribunal passed the order to maintain status-quo. It is not in dispute between the parties that on 11.4.90, the competent authority accepted application and granted permission to the petitioners for closure of C division of standards VI and VII. The District Education Officer, Panchmahals, on 4.6.90, after hearing the parties, i.e. the petitioners and respondent No.1, granted permission to terminate his services. On 13th September, 1990, the Tribunal vacated the order which has been granted by it in the application of the respondent No.1 to maintain status-quo. The respondent No.1 filed Special Civil Application No.1922 of 1999 before this Court challenging the order of the Tribunal dated 13th September 1990 vacating the interim relief earlier granted by it in his favour. On 10th August, 1992, this Court disposed of the Special Civil Application. However, liberty has been granted to respondent No.1 to agitate before the Tribunal regarding claim for absorption in other school. The learned counsel for the parties are not variance that the respondent No.1 has also challenged the order of the competent authority granting permission to the petitioners for closure of C Division of Standards VI and VII. Both the matters came to be decided by the Tribunal on 3.5.95 under the impugned order, where the Tribunal directed the petitioners to reinstate the respondent No.1 in services with full backwages and other incidental benefits. I do not find on the record of the Special Civil Application, the reply of any of the respondents.

#. The averments made by petitioners in the amended Special Civil Application stand uncontroverted. I find from these facts that the Tribunal has pronounced the judgment in the matter after taking written arguments

after more than one year and six months. It is the grievance of the petitioners, which is not disputed that the petitioners or respondent No.1 were not given any opportunity of hearing before pronouncement of the judgment.

#. This delay in pronouncing the judgment of one year and six months is certainly a serious matter. In this case written arguments were taken no doubt by the Tribunal of both the parties, but if the judgment is delayed for such a considerable period, then instead of pronouncing the judgment, the Tribunal should have given an opportunity of making submissions by the parties. It is not gainsaid that by lapse of such a long period, the Tribunal may not be in a position to remember all those matters. Contentions in the form of written arguments though were available to the Tribunal, but where such a long time is taken in delivering the judgment, principles of natural justice as well as fair play required that the parties should have been given an opportunity of hearing.

#. Otherwise also, this delay in pronouncement of judgment certainly adversely affects the petitioners in this case. The Tribunal ordered for reinstatement of respondent No.1 with full salary and the petitioners, without there being any fault on their part, had to bear this heavy liability of salary for this period of one year and six months during which the respondent No.1 could not have been otherwise reinstated by them. In such matter, because of delay in pronouncing the judgment, the sufferers are the petitioners. The respondent No.1 has not to lose anything, but contrary to it, he has got the benefit of salary for one year and six months without doing any work. While pronouncing the judgment, at least the Tribunal should have taken care of its own act of taking such a considerable long time in pronouncing the judgment and appropriately, order could have been passed. This is another ground on which this matter deserves to be remanded back to the Tribunal.

#. Otherwise also, I have gone on the merits of the matter also and I find that most cursorily the matter has been approached and the Tribunal has proceeded with one sided approach that where teachers are approaching to it, relief has to be granted. If we go by the facts of this case, then certainly, I have my own reservations whether the respondent No.1 could have been given any relief. However, I am not expressing any final opinion as I am considering it to be a fit case where the matter has to be remanded back to the Tribunal to give a fresh decision in the matter. One of the important aspect which needs

to be referred is that the Tribunal has not found any invalidity or illegality in the order of the competent authority granting permission to the petitioners for closure of C Division of Standards VI and VII. Once this order was found to be in order, then certainly, whatever excess staff was there had to be taken out by terminating their services. The learned counsel for the petitioners submitted that the petitioner was junior most and as such to take out excess staff, his services were to be terminated. The learned counsel for the petitioners further contends that the District Education Officer, after holding inquiry has found the action of the management to terminate the services of respondent No.1 to be legal and valid. This important aspects were not touched, adjudicated and decided by the Tribunal in its correct perspective.

#. In the result, this Special Civil Application is allowed and the judgment of the Gujarat Primary Education Tribunal, Ahmedabad, dated 3.5.95 passed in Application No.318 of 1989 and cognate matters is hereby quashed and set aside and the matter is sent back to the Tribunal to decide the same afresh after giving the opportunity of making submissions to both the parties. Both the parties are at liberty to produce further evidence, if they so desire. The Tribunal has to decide this matter within six months from the date of receipt of Writ of this order. In case, the respondent No.1 is reinstated back in services by the petitioners, he shall continue to work as a teacher till decision given by the Tribunal. However, where he has not been reinstated, then there is no obligation on the petitioners to reinstate him back during the interregnum. Rule is made absolute in aforesaid terms with no order as to costs.

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(sunil)